

D R A F T

**TIVERTON PLANNING BOARD
MINUTES OF MEETING
April 1, 2014**

Chairman Stephen Hughes called the regular meeting of the Tiverton Planning Board to order at 7:04 P.M. at the Town Hall, 343 Highland Road. Members present were: Vice Chairman Stuart Hardy, Patricia Cote, Rosemary Eva, Carol Guimond, Peter Corr and David Holmes. Peter Moniz and David Saurette were absent.

Also in attendance were: the Planning Board's Clerk and Administrative Officer Kate Michaud, Director of Public Works Stephen Berlucchi, Planning Board's engineering consultant Deirdre Paiva of Commonwealth Engineers and Consultants and the Planning Board's Solicitor Peter Ruggiero, Esq.

1. Main Road Properties, Inc. – c/o Rosalind Weir – PO Box 98 – Adamsville, RI 02801 – Zoning Map Amendment Required to Change District from R-80 to VC (Village Commercial) – Referred by Town Council on January 13, 2014 for Planning Board Findings and Recommendation (See: Zoning Ordinance Article XIX, Section 2) – Plat 706 / Lot 106 (3838 Main Road) and Plat 706 / Lot 107 (3842 Main Road) – E/S Main Road, North of East Road – ZA01-14 – Timeclock = Waived – Continued from March 4, 2014

Ms. Guimond recused herself and left the table. Attorney Timothy More and owner/applicant Rosalind Weir were present on behalf of the petition. Ms. Michaud noted that there was a spelling error in the plan references section of the plan and that a note was needed regarding well service for Lot 107, which was provided by a well located on Lot 108. Ms. Eva asked if a note was needed regarding well service for Lot 106. The Chairman opined that it was not needed, since the well for Lot 106 was located on Lot 106.

The Chairman inquired about the new percolation pipes located on Lot 106. Mrs. Weir replied that there were no immediate plans for them, but that they were only performing soil testing. Ms. Eva inquired about the green colored areas on the locus map, asking if they were wetland areas. Mrs. Weir stated that she was unsure what the green areas represented, but it was not the wetlands line. Ms. Eva noted that there was no legend on the locus map. She also noted that there was a typographical error in the title block and no notes regarding revisions to the plan. Ms. Eva stated that she was very concerned with information presented to the Board to find that there was a deed restriction from RIDEM regarding the new OWST on Lot 107 that the Board had not been disclosed at earlier meetings. The Chairman asked the applicant to add a note to the plan regarding the RIDEM deed restriction.

Ms. Eva inquired about the location of the existing septic system on Lot 106. Mrs. Weir replied that it was located near the street. Mr. Corr asked what the applicant was seeking to do with regards to the septic systems. The Chairman noted that the applicant had stated that nothing was planned at this time, and that the application request was only for an amendment to the zoning map. Mr. Corr asked what advantage there would be to allowing the map change. Mr. More stated that the cheese shop (Lot 106) was currently a legal non-conforming use. He stated that any expansion would require a special use permit and that a change of use would not be permitted under the R-80 zoning designation; adding that the current uses would still be limited under the Village Commercial (VC) Zoning. Mr. More stated that the request was to rationalize the current use with the zoning map. He also stated that a several-year lease had just been signed for the cheese shop, and there was currently no contemplation of change of use or expansion.

Mrs. Weir stated that they did not want to discourage business people at the Four Corners area. She acknowledged that Lot 106 had a previous commercial use as a Narragansett Electric substation. Ms. Eva had noted that fact at the first meeting and had expressed environmental concerns, asking if soil testing had been performed. She had also stated that there had been fires on the site and expressed concerns regarding the Nonquit Pond watershed. The Chairman noted that the application was for a zone change, and that structures already exist on both parcels. Mr. More then produced a report and stated that environmental testing had been performed done, with the PCB and TPH levels tested. He stated that forty (40) cubic yards of material had been removed, and that the results on the site fell below the limits. Ms. Eva asked if Mr. More could provide the Board with a copy of the report for the files. Mr. More agreed to provide it.

The Board members were polled for their thoughts on proceeding. Mr. Hardy reviewed the outstanding items, including corrections to the plan as noted. The Chairman stated that he would like to proceed to a vote. Mr. Holmes stated that he had previously had concerns about addressing this petition versus addressing the whole (Four Corners) area. He noted that the RIDEM deed restriction would restrict the uses on Lot 107. He also noted that there were serious water problems in the area and that the only source of water was groundwater. He added that the deed restriction was evidence of the issues.

Mrs. Weir stated that if the zoning of Lot 107 was VC, more types of items could be sold. She stated that she wanted to keep the property as a place where people could live and work. Mr. Holmes opined that this joint use was good for the area. Mrs. Weir stated that she did not have concerns regarding the water conditions. Mr. More noted that when the business license for the cheese shop (Lot 106) came to the Town Council for the license, there were questions regarding the legal non-conforming status. While the Town Solicitor did agree that the use was legal non-conforming, Mr. More stated that he wanted the tenants to feel that the Town wanted them to remain and opined that it could be done through the zoning designation change.

Mr. Corr stated that from looking at the site plan, it appeared that the water table was high or there was disturbed soil on the site. Mr. More stated that any building permits for expansion would require septic information. Mr. Corr opined that Four Corners area should have been addressed in one shot. Mr. More opined that addressing the entire area will be a lengthy process, and that these properties were separate and distinct from parcels to the south of Four Corners.

The Chairman noted that this was the third meeting addressing this petition. He suggested that the Planning Board could recommend a moratorium on rezoning of other parcels in the area until the entire area is addressed. He added that the zoning of the Four Corners area could be moved up on the Planning Board's agenda. Ms. Eva expressed her displeasure with the quality of the work performed by the applicant's surveyor / engineer which had required the applicant to appear at three meetings.

Mr. Hardy made a motion to recommend to the Town Council the rezoning of Plat 706 / Lot 106 (3838 Main Road) and Plat 706 / Lot 107 (3842 Main Road) from R-80 to VC. Also included in the motion was a recommendation that the Town Council place a moratorium on further expansion of the VC District pending a review of the entire district. This recommendation was conditional upon plan corrections to be reviewed by the Administrative Officer and any other Board member who wished to review the plan. Mr. Hughes seconded the motion. The motion passed 3-1-2. Mr. Hughes, Mr. Hardy and Mr. Holmes voted in favor of the motion. Ms. Eva was opposed, citing her environmental concerns. Ms. Cote and Mr. Corr abstained from the vote. Mr. Corr stated that he abstained because he had missed two prior meetings regarding the petition. Ms. Cote declined to give a reason for her abstention.

2. Estate of Lorraine Merewether and Elma Dollar – c/o Susan Cory, Executor – 38 Old Main Road – Little Compton, RI 02837 – Two (2) Lot Minor Subdivision (No Road Required) – Plat 608 / Lot 102 – Vacant Land – E/S Lake Road, North of Sleepy Hallow Road – N/S Slate Hill Road (Unimproved Stub Road) – R-80 Zoning District – MN01-14 – Time Clock – May 15, 2014 (65 Days) Ms. Guimond recused herself and left the table. Estate Executor Susan Cory and surveyor and engineer Donald Medeiros of Able Engineering were present on behalf of the petition. Mr. Medeiros described the property, as being within the Adamsville Brook watershed. Adamsville Brook drains to the west branch of the Westport River, and this watershed is not part of the Tiverton Watershed Protection Overlay District.

Mr. Medeiros stated that the soil testing on site had been approved, with the water tables being deeper than expected. He stated that Slate Hill Road to the south was a paper street that his clients were not proposing to improve or use for access or frontage. Mr. Medeiros noted that the applicant was waiting for wetlands' edge verification from RIDEM (Rhode Island Department of Environmental Management). He stated that the wetlands had been flagged by Natural Resource Services, but that RIDEM had indicated that the flags were too conservative, and that there might actually be more suitable land on the eastern portion of lot than depicted on the plans.

Ms. Eva asked if all of the stone walls were depicted on the plan. Mr. Medeiros replied in the affirmative. Ms. Eva asked if this property was located near any old or existing junkyards in the area. Mr. Medeiros stated that he was unaware of any junkyards. He stated that the property was approximately 3000 feet from King Road, and approximately 5000 feet from East Road.

Mr. Hardy inquired about the purpose of the subdivision, asking if the property would be sold. Ms. Cory stated that the purpose was to close out the estate through sale of the property. Mr. Hardy noted that the larger proposed lot could support a subdivision in the future.

Mr. Corr inquired about the age of the "Old GWT" (ground water table) noted on proposed Lot 1 and asked if the testing was too old to be used. Mr. Medeiros replied that he had found the pipe during the field survey and did not know its history. Ms. Cory stated that it could be from the 1970's.

Mr. Corr asked if the land would be suitable to improve Slate Hill Road. Mr. Medeiros replied that the right of way was not wet, but that construction of a road would require drainage design since the stub grades south to Sleepy Hollow Road.

Ms. Michaud asked the applicant to add the size of the existing parcel and a purpose statement to the plans. The Chairman asked if anyone thought that more bounds were needed along the easterly section of the property or along the street. Mr. Medeiros replied that some excavation could be performed to get another bound along the street.

Ms. Eva made a motion to approve the Preliminary Plan with corrections as noted. Mr. Hardy seconded the motion. The motion passed unanimously. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Mr. Corr and Mr. Holmes voted in favor of the motion.

Ms. Guimond returned to the table.

3. Maria G. Moreira – 990 Stafford Road – Tiverton, RI 02878 – Two (2) Lot Minor Subdivision (No Road Required) – Zoning Board Approval Required – Plat 213 / Lot 136 – 988 Stafford Road & 990 Stafford Road – R-60 Zoning District / Watershed Protection Overlay District – MN02-14 – Time Clock May 15, 2014 Engineer and surveyor Donald Medeiros of Able Engineering and owner / applicant Maria Moreira were present on behalf of the petition. Mrs. Moreira's daughter, Gloria and her son David Moreira, were also present. Mr. Medeiros described the petition, the location of the property and the two existing single-family dwellings plus a garage on the property.

Mr. Corr noted that the locus on the plan was confusing and suggested that it be clarified. Mr. Medeiros described the sewage disposal and wells – proposed Lot A contains a septic system and a well and proposed Lot B contains a cesspool and a well. He added that the garage would be kept on proposed Lot B. Ms. Eva noted that the contour line was interfering with the Stafford Pond Watershed Protection Overlay District line on the plan.

Ms. Guimond asked if both dwellings were inhabited. Ms. Moreira stated that she lived in the house nearest Stafford Road (990), and that the tenants of the house nearest Old Stafford Road (988) had moved out in November. She added that she and her family had lived there for 17 years. Mr. Medeiros stated that the property was built out and that the buildings had been constructed prior to zoning. He stated that the courts have indicated that they prefer to see each house on a separate lot, and that there was precedence in the courts for granting this type of petition. He added that if the applicant were to seek financing to fix up 988 Stafford Road, it would encumber 990 Stafford Road.

Mr. Hardy expressed concern that if the parcel was subdivided, someone could knock down the structures and rebuild. Mr. Corr noted that a second floor could also be added, intensifying the use without expanding the

footprint. Mr. Hardy expressed concern regarding impervious cover. Mr. Corr asked if the cesspool and leeching pit for 988 Stafford were connected. Mr. Medeiros replied that there were no RIDEM records on the system, and that the survey was only based on visible structures.

Mr. Corr stated that the use and condition of the garage were unknown. He asked if the applicant had considered tearing it (the garage) down to fall within the 10% impervious cover limit. He asked if there was a business running out of the garage. Ms. Moreira replied that there was no business and that it had been used as a garage and for storage. Her son, David Moreira stated that the previous garage had burned down and had been rebuilt. He stated that it was a two (2) stall garage with an old barn attached. He asked why the Board would want them to tear down a good building. Mr. Hardy replied that less impervious cover would lead to better water quality within Stafford Pond, which is a drinking water supply for the Town. A brief discussion ensued regarding the link between impervious cover, runoff and water quality.

Mr. Holmes asked Mr. Ruggiero to reflect on this type of petition. Mr. Ruggiero stated that it was difficult to determine if the courts would take a position in this type of petition. He stated that it would depend on the facts of the case, and that the applicant could apply to the courts to seek relief. Ms. Eva asked if the dwellings could be converted to condominiums on one parcel. Mr. Medeiros stated that he was not familiar with this option and it had not been explored. Ms. Michaud asked if any other ways to reduce impervious surface had been explored. Mr. Medeiros stated that they could look at removing the patio and shed roof on the garage, but that he did not think it would bring the lot under 10%. Mr. Berlucchi asked if the driveway could be made pervious by removing the asphalt. Ms. Paiva suggested that the impervious cover calculation for proposed Lot B looked high and suggested that Mr. Medeiros recheck his calculations.

Thomas Ramatowski, Chairman of the Conservation Commission, asked to be heard. Mr. Hughes noted that this was not a public hearing, but left the decision to the Board. Ms. Eva made a motion to allow Mr. Ramatowski to speak on the petition. Mr. Hardy seconded the motion. The motion passed unanimously. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Ms. Guimond, Mr. Corr and Mr. Holmes voted in favor of the motion.

Mr. Ramatowski stated that he was speaking as an individual and not on behalf of the Commission since they had not met or had a plan. He opined that from the discussion the proposed subdivision went in the opposite direction from improving water quality. Mr. Hardy noted that he and Ms. Eva were representing the Planning Board with a review of the Watershed Protection Overlay District zoning language with a subcommittee from the Conservation Commission and that he shared Mr. Ramatowski's concerns regarding water quality of Stafford Pond. Mr. Holmes noted that no changes to the field conditions were proposed and that there would be no effect on water quality unless something did change. He noted that new construction would need Town approval. Ms. Cote agreed with Mr. Holmes.

Ms. Guimond asked where the hardship was. She stated that she was in favor of protecting the Pond. The Chairman asked the applicant if they could recheck the impervious calculations for proposed Lot B and look at alternatives to decrease the impervious cover. Mr. Medeiros asked for a five-minute recess to discuss these alternatives with the applicant. A recess was called.

Five minutes later, the meeting reconvened. Mr. Medeiros stated that his client would like to consider the option of land condominium. Mr. Medeiros stated that the applicant thanked the Board for hearing the petition, and requested a continuance to the May 6th meeting.

Mr. Hughes made a motion to continue the petition to May 6th. Ms. Cote seconded the motion. The motion passed unanimously. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Ms. Guimond, Mr. Corr and Mr. Holmes voted in favor of the motion.

4. Town Planner & Administrative Officer

A. Administrative Officer's Report Ms. Michaud's March report was not ready.

1. **Draft Annual Report to the Town Council – For April Presentation** The Board's comments from the last meeting had been incorporated and a revised draft distributed. Mr. Hardy made a motion to approve the annual report. Ms. Guimond seconded the motion. The motion passed unanimously. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Ms. Guimond, Mr. Corr and Mr. Holmes voted in favor of the motion.
2. Ms. Michaud had distributed a draft waiver that she intended to sign, along with the alternate Building and Zoning Official Rhett Bishop, regarding the proposed construction of a new building on Fish Road by Tipping Point Realty. She noted that this Site Plan had already been reviewed and approved by the Board and that the design plan was in accordance with the concept drawings furnished to the Board during that review.

Mr. Hardy made a motion to approve of Ms. Michaud's waiver of a formal Design Review. Ms. Cote seconded the motion. The motion passed 6-0-1. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Mr. Corr and Mr. Holmes voted in favor of the motion. Ms. Guimond abstained.

B. Construction Update:

1. **Stafford View Farm** Ms. Paiva stated that the hay bales and silt fence were in place on the site, and that the site had held up well in the recent rain storms.
2. **Tiverton Public Library** Ms. Paiva stated that there were some site issues caused by the recent rain, which she had detailed in her SWPPP (Storm Water Pollution Prevention Plan) report. She stated that the water line had been installed, and that she had visited the site that day. She noted that the site was very wet, with a lot of water pooling in the forested wetland area. She stated that quick remediation of the wetland area was needed. Ms. Paiva added that there had been no impact to the adjoining properties. A brief discussion ensued.
3. **Construction Specifications: Updates Recommended for Hearing** The draft was briefly reviewed, and it was noted that there were some spelling corrections needed. Ms. Eva suggested that this item be continued in order to allow for input from absent member David Saurette, due to his expertise on this topic. The Board members agreed by consensus. The Chair continued this item to May 6th meeting.

C. Town Planner Items

1. Challenge Grant Project

a. Include Plat 119 / Lot 108 (1019 Main Road) in the Commercial Zoning District – Response from the Cecil Group A written response was received from the Cecil Group, which did not recommend the inclusion of the parcel within the district due to lot area and setback nonconformities. Ms. Guimond opined that there was no other viable use of the property (other than the existing commercial use). Other Board members noted that the property had always had an industrial or commercial use, and that the structure pre-dated zoning.

Mr. Hardy made a motion to instruct the Cecil Group to include Plat 119 / Lot 108 (1019 Main Road) within the proposed zoning map amendment. Mr. Holmes seconded the motion. The motion passed 6-0-1. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Guimond, Mr. Corr and Mr. Holmes voted in favor of the motion. Ms. Eva abstained.

b. Recommendation to the Town Council / Request Public Hearing The Chair noted that the Town Council had asked the Planning Board to look at pre-existing non-conforming commercial uses within the area between Old Stafford Road and Stafford Road, including Plat 213 Lots 141, 142, 143 and 137 at its workshop. Uses included the East Bay Community Action Program, Tiverton Sign Shop and Barboza's Auto Sales. The Cecil Group had reported on these parcels as well, and had also recommended not including them in the rezoning. It was noted that the rezoning in the area of Bliss Four Corners would be to the Pedestrian Friendly District and that the uses did not really fit within that proposed district. The Board members determined that they were not ready to make a recommendation on these parcels, noting that they might be best zoned as General Commercial. Ms. Michaud agreed to distribute more detailed maps for discussion. The Board agreed by consensus not

to include these parcels within the rezoning at this time, but to inform the Town Council that the Planning Board would be studying alternatives.

Mr. Hardy made a motion to forward the Commercial Form-Based Code report to the Town Council with a recommendation to adopt the report and implement the zoning amendments. Ms. Eva seconded the motion. The motion passed unanimously. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Ms. Guimond, Mr. Corr and Mr. Holmes voted in favor of the motion.

2. Update: Stone Bridge Abutment Repairs

The Stone Bridge plan was still under review by RIDOT.

D. Miscellaneous

1. Mr. Berlucchi announced that **CDBG** (Community Development Block Grant) money had been reallocated to rebuild Walnut Street and noted that Ms. Michaud had assisted with the process.
2. Mr. Berlucchi stated that Police Chief Blakey wanted him to remove the Private Road sign installed on **Shore Road**. He stated that he would like to proceed with a Highway by Use action. Mr. Ruggiero stated that he would speak with him about this matter the next day and would assist him in filing the petition with the Town Council. Ms. Guimond asked if parking would be restricted. Mr. Berlucchi stated that he would recommend it to the Town Council and it would be their decision.
3. Mr. Hardy noted that there had been a **casino proposal** filed recently in neighboring Fall River, in an area very close to the Tiverton line. He asked if anything should be done to prepare for such a development. Ms. Michaud opined that it was early in the process and briefly reviewed the casino licensing procedure for the Southeast Region of MA. She noted that there were competing proposals in New Bedford and East Taunton and that only one city would receive the license.
4. Ms. Eva reminded the Board members to file their **disclosure statements with the Ethics Commission**.

5. Tiverton Planning Board

A. Solicitor's Report (Site Ready Appeal) Mr. Ruggiero stated that a Planning Board of Appeals (heard by the Zoning Board) meeting had been held on March 25th. At that meeting the majority of the discussion revolved around the recent Love's Superior Court decision and the appeal had been continued to April 22nd. Mr. Ruggiero stated that he had met with Statewide Planning that day to discuss the potential impacts of the Love's case, which he did not think was legally sustainable. (The Love's case found that the Planning Board cannot consider the Required Findings when making a decision regarding a Master Plan.) Standards of review were discussed and it was noted that without the Required Findings there would be no standard of review for Master Plans. Mr. Ruggiero advised the Board to proceed maintaining the status quo. He stated that the Tiverton Planning Board was not a litigant in the Love's case and the Supreme Court was yet to weigh in.

B. Earth Removal – Draft Revisions to Town Code Chapter 38 – Status Ms. Michaud noted that a hearing had not been scheduled in order to allow the Conservation Commission time to study the issue of groundwater separation. Mr. Corr expressed concerns regarding buffer integrity and the need to protect the tree canopy from damage.

C. Quarry Licenses – Status of Applications No applications had been filed.

D. Correspondence There was no correspondence.

E. Miscellaneous

1. **Historic District – Update from S. Hardy / Possible Workshop?** Mr. Hardy stated that Mr. Holmes and EDC member Susan Gill had attended recent Historic Preservation Advisory Board (HPAB) meetings, but that the group had had a difficult time meeting a quorum. He stated that the HPAB needs to decide on a path forward. Four Corners property owner Rosalind Weir was polling

property owners of the District for their opinions. Mr. Hardy stated that a broad general consensus was needed and without it the proposed Historic District wouldn't work. He stated that the efforts would probably be suspended for the time being as more support was needed to continue.

2. Wind Energy Generation Facilities – Update from Subcommittee There was no update.

3. Watershed Protection Overlay District Update: Conservation Commission Subcommittee Ms. Eva noted that she and Mr. Hardy had attended a subcommittee meeting on March 8th. Mr. Hardy stated that there had been general discussion regarding the ERS (Environmental Review Statement) process, with concerns that it was costly and not that effective. He stated that there had also been discussion regarding allowing building up to the 10% impervious cover threshold. Lorraine Joubert is being consulted for best practices. The next meeting was scheduled for Saturday, April 5th at 8:30 AM. Ms. Paiva noted that groundwater recharge was paramount.

F. Approval of Minutes:

February 4, 2014 Mr. Hardy made a motion to approve the minutes. Ms. Guimond seconded the motion. The motion passed unanimously. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Ms. Guimond, Mr. Corr and Mr. Holmes voted in favor of the motion.

March 4, 2014 Mr. Hardy made a motion to approve the minutes. Mr. Holmes seconded the motion. The motion passed 5-0-2. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Guimond and Mr. Holmes voted in favor of the motion. Ms. Eva and Mr. Corr abstained.

G. Adjournment: Mr. Holmes made a motion to adjourn. The motion was seconded by Mr. Hardy. The motion passed unanimously. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Ms. Guimond, Mr. Corr and Mr. Holmes voted in favor of the motion. The meeting adjourned at 10:10 P.M.

(Italicized words represent corrections made on the approved date.)

Submitted by: _____
Kate Michaud, Clerk

Approval Date: DRAFT